

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

WAYA TSALAGI JONES,)	4:11CV3126
)	
Plaintiff,)	
)	
v.)	MEMORANDUM
)	AND ORDER
STEVEN E. ELMSHAEUSER,)	
)	
Defendant.)	

Plaintiff filed her Complaint on July 25, 2011. (Filing No. [1](#).) Plaintiff has previously been given leave to proceed in forma pauperis. (Filing No. [7](#).) The court now conducts an initial review of the Complaint to determine whether summary dismissal is appropriate under [28 U.S.C. § 1915\(e\)\(2\)](#).

I. SUMMARY OF COMPLAINT

Plaintiff filed her Complaint on July 25, 2011, against Steven Elmshaeuser, a County Attorney in Box Butte County, Nebraska. (Filing No. [1](#) at CM/ECF p. 1.) Plaintiff is a non-prisoner who currently resides in Hot Springs, South Dakota. ([Id.](#); *see also* Docket Sheet.)

Condensed and summarized, Plaintiff alleges that Defendant conducted an “illegal search” of Bret Tschacher’s (“Tschacher”) home without a warrant.¹ ([Id.](#) at CM/ECF p. 3.) Plaintiff, who is Tschacher’s wife, asserts that there was “no threat” for Tschacher to have “firearms in his home.” ([Id.](#)) Plaintiff also alleges that Tschacher was not given “Miranda Rights,” and that he was not a felon because he was permitted to vote, work, buy firearms and ammunition, and engage in other

¹The court takes judicial notice that Tschacher was recently found guilty of being a felon in possession of a firearm and sentenced to 21 months in prison. (*See United States v. Tschacher*, Case No. 09CR3025, Filing No. [108](#).)

conduct which felons are not entitled to do. (*Id.* at CM/ECF pp. 3-4.) Plaintiff seeks “full restitution,” and the restoration of “all rights to Bret Tschacher.” (*Id.* at CM/ECF p. 7.)

II. APPLICABLE LEGAL STANDARDS ON INITIAL REVIEW

The court is required to review in forma pauperis complaints to determine whether summary dismissal is appropriate. *See 28 U.S.C. § 1915(e)*. The court must dismiss a complaint or any portion thereof that states a frivolous or malicious claim, that fails to state a claim upon which relief may be granted, or that seeks monetary relief from a defendant who is immune from such relief. *28 U.S.C. § 1915(e)(2)(B)*.

A pro se plaintiff must set forth enough factual allegations to “nudge[] their claims across the line from conceivable to plausible,” or “their complaint must be dismissed” for failing to state a claim upon which relief can be granted. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 569-70 (2007); *see also Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1950 (2009) (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”). Regardless of whether a plaintiff is represented or is appearing pro se, the plaintiff’s complaint must allege specific facts sufficient to state a claim. *See Martin v. Sargent*, 780 F.2d 1334, 1337 (8th Cir. 1985). However, a pro se plaintiff’s allegations must be construed liberally. *Burke v. North Dakota Dep’t of Corr. & Rehab.*, 294 F.3d 1043, 1043-44 (8th Cir. 2002) (citations omitted).

III. DISCUSSION OF CLAIMS

In order for Plaintiff to proceed with her claims, she must have standing. Standing is a jurisdictional requirement that “can be raised by the court sua sponte at any time during the litigation.” *Delorme v. United States*, 354 F.3d 810, 815 (8th Cir. 2004). As a general rule, to establish standing a plaintiff must assert her legal rights or interests and not “the legal rights or interests of third parties.” *Warth v. Seldin*, 422

U.S. 490, 498-99 (1975). Moreover, a non-attorney pro se litigant may not represent someone else in federal court. *See 28 U.S.C. § 1654; Iannacone v. Law, 142 F.3d 553, 558 (2d Cir. 1998)* (concluding a non-attorney pro se party may not represent another's interests).

Liberally construed, Plaintiff appears to challenge the validity of Tschacher's conviction on the basis of an illegal search and seizure. She alleges Defendant illegally searched Tschacher's home even though he was not a "felon." (Filing No. 1 at CM/ECF pp. 3-4.) She asks the court to "restore" Tschacher's rights and order restitution for "11 years of . . . lies." (*Id.* at CM/ECF p. 7.) As discussed above, Plaintiff may not assert the legal rights of her husband without standing to do so. Moreover, even if Plaintiff could establish standing to litigate her husband's claims, she is a non-attorney pro se litigant and may not represent her husband in this court without an attorney. Accordingly, Plaintiff's Complaint must be dismissed.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Complaint (filing no. 1) is dismissed without prejudice.
2. A separate Judgment will be entered in accordance with this Memorandum and Order.

DATED this 6th day of October, 2011.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge

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